

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

LYNNE HOYT, Personal Representative of
the Estate of CHANCE A. HOYT, deceased,

Plaintiff,

v.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON dba TRI-MET, and
RICHARD B. SHAFFER,

Defendants.

Case No.

COMPLAINT

Wrongful Death – Negligence

Filing Fees Based Upon ORS 21.160(1)(e)
Amount in Controversy: \$12,555,000.00

(Not Subject to Mandatory Arbitration)
(Demand for Jury Trial)

Plaintiff alleges:

FIRST CLAIM FOR RELIEF
(Against Defendant Tri-Met)
(Negligence)

1.

At all times material hereto:

- a) Defendant Tri-County Metropolitan Transportation District of Oregon dba Tri-Met ("TRI-MET"), was a public body owning and operating public transportation, including a light rail train system known as the Metropolitan Area Express ("MAX"), within the counties of Multnomah, Washington, and Clackamas, in the state of Oregon, with its principal offices located in the city of Portland, county of Multnomah, state of Oregon;

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After plaintiff's decedent arrived at the Crossing, there was an eastbound MAX train that passed from her right to her left. As the eastbound train traversed the intersection, plaintiff's decedent opened the swing gate and, after waiting for it to clear the Crossing, proceeded to attempt to cross the train tracks travelling westbound on the sidewalk.

Shortly after the eastbound train cleared the Crossing, a westbound train was arrived at the Crossing. There were no additional warning devices or indications that a second train (westbound) was coming just after the first train (eastbound) had cleared the intersection.

As plaintiff's decedent was attempting to cross the westbound MAX tracks while traveling on foot on the sidewalk, she was struck by the westbound MAX train, coming from her left, operated by defendant Shaffer, traveling in a westerly direction.

Defendants Tri-Met and Shaffer, and each of them, knew, or in the exercise of reasonable care, should have known, prior to June 5, 2017, that roadway users and pedestrians in general, and plaintiff's decedent in particular, need additional visual or auditory warning information or active warning devices in the special case when multiple trains are approaching a railroad grade crossing in close temporal proximity. This is because the directionally ambiguous auditory and visual warnings at the Crossing can give roadway users and pedestrians the false impression that, as is usually the case, they are signaling the passage of just one train across the Crossing. This is particularly important at this pedestrian crossing, where the visual warning signs are placed such that they encourage looking in both directions before passing through an active gate, when the line of sight to westbound vehicles is limited due to vegetation and crossing components (a pole and a small metal box on a pole) in the southeast quadrant of the Crossing.

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2 The angled approach of the pedestrian pathway to the railroad tracks affects how a
3 roadway user or a pedestrian will look once they were at the tracks. This pathway did not turn to
4 be perpendicular to the tracks, offering equal opportunities to look both left and right, until it was
5 within several feet of the ends of the ties, where a pedestrian would be “fouling” (entering upon)
6 the tracks. The result is that the second visual warning sign, to look in both directions, was not in
7 the central field of view of a westbound pedestrian until they were nearly fouling the tracks.

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9 There was no notification, such as a stop sign, to indicate that stopping at that location,
10 before fouling the tracks, was the most appropriate place to look both ways, when there was a
11 clear line of sight down the tracks in both directions. Active automatic gates, such as those
12 already in place on the roadway at this grade crossing, that do not allow passage until all trains
13 have cleared the crossing, would provide unambiguous information that it was not safe to cross
14 the tracks until the gates lifted. In addition, the lack of consistency between the pedestrian
15 warning devices between different grade crossings (*e.g.*, the Elmonica Station crossing at S.W.
16 170th Avenue, just east of this crossing) violates the human factors principle of providing the
17 same information in the same manner that is a mainstay of traffic engineering.

18 10.

19 At the time of the incident, plaintiff’s decedent resided in the city of Portland, state of
20 Oregon, just a short distance from the Providence Park MAX station. Plaintiff’s decedent had
21 previously used MAX trains for transportation, and was familiar with the procedures involved in
22 taking the MAX. Plaintiff’s decedent purchased a MAX ticket that day, and her usual practice
23 was to exit at the Willow Creek station, where she would catch a Tri-Met bus, and travel to
24 Portland Community College’s Rock Creek campus, where she was taking classes.

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The presence of one or more of the following conditions combined to make The Baseline Crossing unreasonably dangerous:

- a) The Crossing had active pedestrian warning devices, with flashing lights and ringing bells, but the warning devices were ambiguous regarding trains coming from different directions, and regarding the existence of one or more than one train, so that a pedestrian would not have adequate warning that, after one train had passed, another train was approaching from the opposite direction;
- b) The Crossing failed to have Second Train Coming signs, which would have alerted pedestrians to the fact that a second train was coming from a different direction;
- c) As a pedestrian travels on the sidewalk on the south side of Baseline Road, to cross the tracks while walking in a generally westerly direction, the sidewalk approaches the grade crossing at an angle that makes it more difficult to look to the left than to look to the right, because they are facing toward the right; the sidewalk does not turn to be perpendicular to the tracks, providing equal ease of looking in both directions, as at other intersections (*e.g.*, the western edge of S.W. 175th Avenue at the Elmonica Station) until a pedestrian is within nearly fouling the tracks;
- d) The swing gate at this location could be opened by pedestrians at any time, and did not lock, or provide any other type of warning to pedestrians, as is provided to vehicles on Baseline Road, such as a drop gate directly in front of the tracks, when there was a potential second train approaching at the Crossing;
- e) A fatality occurred at the same Crossing at Baseline Road on February 26, 2010, when a pedestrian was struck by a MAX train;
- f) The MAX trains in this urban setting, with many homes and apartments within close proximity to the tracks, travel at a high rate of speed without due regard to possible pedestrians crossing on a regular and frequent basis;
- g) When a pedestrian traveling west is located behind the passive swing gate, which is approximately sixteen feet (16') away from the tracks, there are many obstacles preventing a clear view of the westbound track and any potential approaching train, including utility and transit poles, many shrubs and plants, and a building next to the tracks; this is the location where the most conspicuous of the two "look both ways" signs is located, but the view to westbound trains is limited by the obstacles at that location; the second "look both ways sign" was located in a direction that a pedestrian would be facing only after reaching the turn in the pathway adjacent to the railroad ties that delineates the area occupied by a passing train;

1 h) In addition to the aforementioned dangers and hazards, the track itself runs
2 northwest and southeast at an acute angle to Baseline Road, which runs in
3 a more direct west and east direction.

4 12.

5 The dangerous conditions at the Crossing have been repeatedly ignored by Tri-Met and
6 its employees operating trains or otherwise working in the area of the Baseline Crossing.

7 13.

8 Defendant Tri-Met, acting independently as well as vicariously through the acts and
9 omissions of defendant Schaffer, the train operator who was acting within the course and scope
10 of his employment, was negligent in one or more of the following particulars:

11 a) In maintaining the Crossing in a dangerous condition for pedestrians in
12 general, and plaintiff's decedent in particular, because it did not have a
13 "Second Train Coming" warning sign;

14 b) In maintaining the Crossing in such a manner that pedestrians in general,
15 and plaintiff's decedent in particular, traveling in a generally westerly
16 direction on the south side of S.W. Baseline Road, after opening the swing
17 gate to cross the tracks, the sight lines were directed toward eastbound
18 train traffic, diverting the pedestrian's line of sight away from any
19 westbound trains that might be arriving at the Crossing at a high rate of
20 speed, shortly after an eastbound train had cleared the crossing;

21 c) In failing to warn the public in general, and plaintiff's decedent in
22 particular, of the dangerous conditions existing for pedestrians at the
23 Crossing, at a time when defendant Tri-Met knew, or, in the exercise or
24 reasonable care, should have known, that the absence of a "Second Train
25 Coming" warning sign created a reasonably foreseeable and unreasonably
26 dangerous condition, because the sight lines are limited, the auditory and
visual warning signs are ambiguous, and the more frequent situation
pedestrians experience with this ambiguous signage is that there is only
one train passing; this special situation, which leads to grade crossing
users being unaware of the second train approaching from the opposite
direction has long been acknowledged in the railroad industry;

27 d) In maintaining the angle of the swing gate and its mounted "look both
28 ways" sign at an oblique angle to the westbound tracks, and at a
29 considerable distance from the tracks, so that a pedestrian at that location
30 is facing toward eastbound trains and away from westbound trains, and
31 westbound trains are obstructed by vegetation and crossing components,
32 and westbound trains are less conspicuous or difficult to see from that
33 location;

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- 1 e) In maintaining the Crossing such that the view to pedestrians approaching
2 the Crossing traveling in a generally westerly direction on the south side of
3 S.W. Baseline Road, was blocked by the vegetation and crossing
4 components in the southeast quadrant of the Crossing;
- 5 f) In failing to keep and maintain a proper lookout;
- 6 g) In failing to maintain adequate control over the MAX train;
- 7 h) In failing to yield the right-of-way to pedestrians attempting to cross the
8 tracks at the Crossing, including, but not limited to, plaintiff's decedent;
- 9 i) In failing to sound an adequate audible warning on the train itself to warn
10 pedestrians in general, and plaintiff's decedent in particular, at or near the
11 Crossing, as the approaching westbound MAX train entered the area of the
12 Crossing;
- 13 j) In failing to provide adequate audible or visual warnings of the presence of
14 a second train coming to pedestrians attempting to cross the tracks at the
15 Crossing in general, and plaintiff's decedent in particular, at a time when
16 defendants knew, or in the exercise of reasonable care, should have known,
17 of the special case created by two trains approaching a grade crossing in
18 close temporal proximity, especially at an angled crossing with ambiguous
19 auditory and visual warnings, which leads to pedestrians seeing one train
20 and not looking for a train coming from the other direction;
- 21 k) In entering the area of the Crossing at a rate of speed that was greater than
22 was reasonable and prudent considering the conditions then and there
23 existing;
- 24 l) In failing to follow basic principles of defensive driving for MAX train
25 operators, including: i) aim high while operating; ii) view the total traffic
26 picture; iii) keep your eyes scanning; iv) leave yourself an out; and v) make
sure they see you;
- m) In failing to maintain a physical barrier in order to prevent pedestrians in
general, and plaintiff's decedent in particular, from entering the portion of
the sidewalk at the Crossing that crossed the westbound MAX tracks, at a
time when a westbound MAX train was approaching the Crossing,
particularly at a time when an eastbound MAX train had just passed
through the Crossing;
- n) In failing to maintain directional gates and/or channeling for pedestrians
approaching the Crossing, in addition to the swing gates that existed, in
order to put the pedestrian in a position to see MAX trains coming into the
Crossing from both directions;

o) In failing to provide unambiguous warnings to pedestrians in general travelling on the sidewalk in a westerly direction on the south side of Baseline Road at the Crossing, and plaintiff's decedent in particular, of the danger presented by a westbound train approaching the Crossing because of a lack of adequate visibility due to blocked sight lines and the consequences of an angled crossing, at a time when defendants knew, or, in the exercise of reasonable care should have known, that the pedestrian sidewalk passes through S.W. Baseline Road and the Crossing at an acute angle with blocked sight lines to westbound trains in the southeast quadrant.

14.

The negligence of defendants, and each of them, in one or more of the particulars set forth herein, was a substantial factor in causing plaintiff's decedent to suffer the following injuries that led to her death:

a) Blunt force head trauma.

15.

The negligence of defendants, and each of them, in one or more of the particulars set forth herein, caused plaintiff's decedent to incur pain and suffering during the period between time of the injury to plaintiff's decedent and the time of her death, thereby entitling the estate to an award of noneconomic damages in a reasonable amount to be awarded by the jury, but not to exceed the sum of \$1,000,000.00.

16.

The negligence of defendants, and each of them, in one or more of the particulars set forth herein, caused the beneficiaries of the estate, Pedro Duran, Jr., husband, Lynne Hoyt, mother, and Cole Rolland Hoyt, father, to suffer the loss of society and companionship of plaintiff's decedent, entitling the estate to an award of noneconomic damages in a reasonable amount to be awarded by the jury, but not to exceed the sum of \$10,000,000.00.

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The negligence of defendants, and each of them, in one or more of the particulars set forth herein, caused the estate to incur a pecuniary loss on behalf of plaintiff's decedent in the approximate sum of \$50,000.00 for the decedent's loss of earnings to date, and the approximate sum of \$1,500,000.00 as the present value for the decedent's lost wages and/or loss of earnings capacity in the future.

18.

The negligence of defendants, and each of them, in one or more of the particulars set forth herein, caused the estate to incur the approximate sum of \$5,000.00 for the reasonable burial and funeral expenses of plaintiff's decedent.

19.

Plaintiff reserves the right to amend this Complaint at the time of trial to more completely allege the estate's economic losses and/or to conform to proof offered at trial.

20.

Pursuant to the provisions of ORS 30.275, notice of the estate's claim against defendant Tri-Met was provided on or about July 7, 2017.

21.

Plaintiff hereby demands a jury trial.

**SECOND CLAIM FOR RELIEF
(Against Defendant Schaffer)
(Negligence)**

22.

Plaintiff realleges ¶¶ 1 through 12, and 14 through 21 of her First Claim for Relief.

23.

Defendant Schaffer was negligent in one or more of the following particulars:

- a) In failing to keep and maintain a proper lookout;
- b) In failing to maintain adequate control over the MAX train;

- 1 c) In failing to yield the right-of-way to pedestrians attempting to cross the
2 tracks at the Baseline Crossing, including, but not limited to, plaintiff's
3 decedent;
4 d) In failing to sound an adequate audible warning on the train itself to warn
5 pedestrians on or near the Baseline Crossing as the approaching westbound
6 MAX train entered the area of the Baseline Crossing;
7 e) In entering the area of the Baseline Crossing at a rate of speed that was
8 greater than was reasonable and prudent considering the conditions then
9 and there existing;
10 f) In failing to follow basic principles of defensive driving for MAX train
11 operators, including: i) aim high while operating; ii) view the total traffic
12 picture; iii) keep your eyes scanning; iv) leave yourself an out; and v) make
13 sure they see you.

14 24.

15 The negligence of defendant Schaffer, in one or more of the particulars set forth in ¶23
16 above, was a substantial factor in causing plaintiff's decedent to suffer the injuries leading to her
17 death as set forth in ¶14 of the First Claim for Relief.

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19 The negligence of defendant Schaffer, in one or more of the particulars set forth in ¶21
20 above, was a substantial factor in causing the estate to incur damages as set forth in ¶¶15 through
21 19 of the First Claim for Relief.

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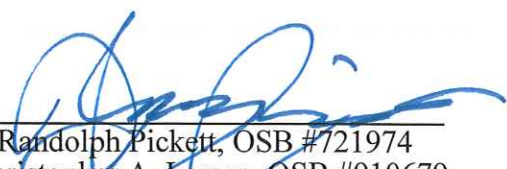
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1 WHEREFORE plaintiff prays for judgment against defendants, and each of them, in the
2 sum of \$7,555,555.00, together with prejudgment interest on plaintiff's decedent's economically
3 verifiable losses at the rate of 9% per annum from the date of loss to the entry of judgment, for
4 her costs and disbursements, and for such other relief as the court deems just and equitable.

5 DATED this 4th day of June, 2019.

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9 J. Randolph Pickett, OSB #721974
10 Christopher A. Larsen, OSB #910679
11 Kimberly O. Weingart, OSB #091407
12 Shangar S. Meman, OSB #171205
13 PICKETT DUMMIGAN MCCALL LLP

14 of Attorneys for Plaintiff
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